IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

C.W.P. 1355 of 2007

Date of Decision: 22nd October, 2007.

Vijay Puri and others ***…..Petitioners.***

Versus

State of H.P. and others. ***……Respondents.***

Coram

The Hon'ble Mr. Justice V.K.Gupta, Chief Justice.
The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioners: Mr. Pankaj Sharma, Advocate.

For the respondents : Mr. M.S.Chandel, Advocate General with Mr. J.K. Verma, Dy. Advocate General for respondents No. 1 to 3.

Mr. Ajay Sharma, Advocate, for respondent No.4.

Mr. J.S.Bagga, Advocate, for respondent No.5.

V.K.Gupta, Chief Justice (Oral).

Election program was published on 10th July, 2007. Item No. 2 indicated the date of publication of the tentative voters' list on 9th August, 2007. Item No. 3 indicated that objections to the tentative voters' list would be received and decided between 11th August, 2007 and 14th August, 2007. Item No. 3 has been very badly drafted and it is very unhappily worded because it did not specifically lay down as to what would be the last date and time for submission of objections to the

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

tentative voters' list. It fixed a block period of 11th August, 2007 to 14th August, 2007, only indicating that whatever is to be done has to be done during the office timings.

The tentative voters' list was published on 9th August, 2007. It contained 22 names. The petitioners' names were not included and, therefore, feeling aggrieved they submitted their objections to the same. The petitioners' contention is that the objections were submitted on 14th August, 2007. On 16th August, 2007, the final voters' list was published, this time containing 26 names. The number had increased from 22 to 26. It was because the names of the four petitioners were included in the list of voters as was finally published on 16th August, 2007.

Feeling aggrieved, a petition under Section 94 of the H.P. Co-operative Societies Act, 1968 was filed which has been decided by the Additional Registrar (Monitoring), Co-operative Societies, Shimla, respondent No. 2 herein, vide the impugned order dated 27th September, 2007. He has set aside the order dated 16th August, 2007 passed by Mr. Yoginder Singh, Registration Officer to the extent it included the names of the four petitioners as eligible voters and the only two grounds which formed the basis of his taking the aforesaid view are, firstly that respondents and others concerned were not afforded any opportunity of hearing to controvert and contest the request of the petitioners for their inclusion as voters and secondly the petitioners' objections against their non-inclusion and with a request for their inclusion having been filed on 14th August, 2007, it was too late for the Registration Officer to have taken note of these objections and to have disposed them of on their merits.

As far as the first ground is concerned, even though it is true that Mr. Yoginder Singh had allowed the objections as well as the prayers of the four petitioners in the absence of the respondents and others concerned and had passed the

order on 16th August, 2007 without hearing the objections of all concerned, this actually called for a re-consideration of the whole issue on merits. As far as the second ground is concerned, respondent No. 2 could have looked at the election program published on 10th July, 2007. Had he done so, he would have found that in item No. 3 there was no specific date and time fixed or prescribed which could be considered as the last date for receiving objections. The only prescription was the block period of 11th August, 2007 to 14th August, 2007 and the only time fixed was during office hours. Respondent No. 2, therefore, erred in setting at nought the entire process, lock, stock and barrel. He should have remitted the matter for re-consideration on merits so that parties could have been afforded an opportunity and the contentious issue could have been thrashed out and dealt with on merits and in accordance with law.

Based on the aforesaid observations, the parties through their learned counsel today suggested to us that we should remit the matter for re-consideration on merits after the parties and others concerned are afforded an opportunity of hearing. Based on such submissions, the following agreed order is hereby passed and the petition is disposed of finally at the motion hearing stage.

The matter is remitted to respondent No. 2 for re-consideration and disposal afresh in accordance with law. Specific directions are passed qua respondent No. 2 for re-consideration on the following lines:

a) First and foremost, he shall ensure that the objections/requests of the petitioners can be considered only if these were received before the end of office hours on 14th August, 2007. If these were received after office hours, even if received on 14th August, 2007, these have to be discarded since these were not liable to be considered as having been received belatedly.

b) He is to satisfy himself about the eligibility criteria for becoming and being the Members of the Society. Undoubtedly, only such persons are eligible to be made voters who are Members of the Society.

c) The opportunity of hearing has to be afforded to the petitioner, respondent No. 4 as well as to such other persons who desire to be heard for and against inclusion of the petitioners in the final voters' list. To enable others interested to avail of the opportunity of hearing, we direct respondent No. 2 to get published a notice in a Hindi newspaper having circulation in Shimla to the aforesaid effect. This notice shall be got published latest by 25th October, 2007. In this notice, respondent No. 2 shall fix the date of hearing as 30th October, 2007 in his office at 2:00 PM.

The hearing, therefore, shall take place on 30th October, 2007 at 2:00 PM in the office of respondent No. 2. Whoever, including the petitioners, respondent No. 4 or anybody else personally, physically appears there, will be afforded the opportunity of hearing. The matter shall not be adjourned on any ground nor shall respondent No. 2 await the presence of anybody for the aforesaid or any other purpose.

Following the aforesaid directions, respondent No. 2 by passing a reasoned and speaking order shall dispose of the objections/requests of the petitioners. At the risk of reiteration we wish to direct him to ensure that first and foremost he shall decide about the eligibility of the petitioners for being or to become the Members of the Society and only if he is fully satisfied that the petitioners were or have been the Members of the Society before the relevant date, he shall include their names in the final voters' list.

As far as the fixing of the "relevant date" is concerned, respondent No. 2 shall, based on established parameters as well as the established norms himself decide about the "relevant date" and take that alone into consideration while determining the eligibility of the petitioners for being Members and consequently as voters.

If respondent No. 2 decides that the petitioners' names should be included in the final voters' list, the votes cast by them by virtue of our order dated 29th August, 2007 shall be counted. If respondent No. 2 decides to the contrary, the votes cast by the petitioners shall not be counted and shall be discarded. In either of the eventualities, on 31st October, 2007 the result of the election held on 30th August, 2007 with respect to the remaining posts/offices shall be declared and implemented in all respects.

Mr. J.K.Verma, has taken down the gist of this order for its communication to respondent No.2 for implementation and compliance by him.

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CMP No. 2212 of 2007.

Infructuous.

(V.K.Gupta), C. J.

22nd October, 2007. **(Rajiv Sharma), J.**

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